

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SANG KIEN)	
Claimant)	
VS.)	
)	Docket No. 205,593
EXCEL CORPORATION)	
Respondent)	
Self-Insured)	

ORDER

Claimant appeals from a May 29, 1997, Award entered by Special Administrative Law Judge William F. Morrissey. The Appeals Board heard oral argument on November 26, 1997.

APPEARANCES

Claimant appeared by his attorney, Chris A. Clements of Wichita, Kansas. Respondent appeared by its attorney, D. Shane Bangerter of Dodge City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award, except for the stipulation concerning the dates of accident which should be corrected to be a series of accidents beginning June 26, 1995, and continuing each and every working day through September 15, 1995, as announced by the parties during oral argument to the Board.

ISSUES

The Special Administrative Law Judge awarded claimant permanent partial disability compensation based upon a 10 percent loss of use of the left shoulder. Claimant alleges bilateral shoulder injuries and contends the award should thus be for a general body disability. Nature and extent of disability is the sole issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs of the parties, the Appeals Board finds that the Award entered by the Special Administrative Law Judge should be affirmed.

The findings of fact and conclusions of law as enumerated in the Award by the Special Administrative Law Judge are found to be accurate and are hereby adopted by the Appeals Board. The Appeals Board agrees that claimant has not sustained his burden of proving he suffered injuries to his right shoulder during the period of time encompassed by the stipulated dates of accident. The medical records and notes of the physicians and nurses who treated claimant during the period of accident make no mention of right shoulder complaints. It was not until claimant was examined at his attorney's request by Dr. Ernest R. Schlachter on May 2, 1996, that the right shoulder complaints were medically documented. However, although Dr. Schlachter related the right-shoulder condition he found in May 1996 to claimant's employment with respondent, he could not say that claimant was injured during the period of time claimant alleged were his dates of accident. Moreover, Dr. Pedro Murati, who is board certified in physical and rehabilitation medicine, and who treated claimant from June 30, 1993, until February 21, 1996, a period of time that included the claimant's alleged dates of accident, was of the opinion that claimant's impairment was limited to the left-upper extremity to the level of the shoulder. Dr. Murati did not find any permanent impairment to the right shoulder.

The Appeals Board agrees with the finding by the Special Administrative Law Judge that Dr. Murati's testimony is the more credible opinion concerning the nature and extent of claimant's condition in September 1995.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge William F. Morrissey, dated November 26, 1997, should be, and is hereby, affirmed in all respects and the orders contained in said Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
D. Shane Bangerter, Dodge City, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director